

# HOUSING LEASE FUTURES

Volume 1, Issue 2—April 19 2011



## MOVING TOWARDS PEACE

### LEASE CONSULTATION

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There have been four lease meetings attended by 72 members in Bentleigh East, Frankston, Bayswater North and Huntingdale (45 % of the membership).

The board has met its initial commitment to a consultation process involving three member meetings, a general meeting of members and the establishment of a Lease Sub Committee.

A further member meeting was organized in Huntingdale on 18 April 2011.

As promised, agendas were forwarded well in advance of the meetings. Each meeting was attended by:

Shirley, Faram, Chairperson  
Ian McLaren, General Manager  
Joy Haines, Tenancy Worker  
John McNerney, CEHL

Members have been forthright in supporting the consultation process. Views about the board's handling of the lease issue have varied from hostility to sympathy - from saying the board's admission "we were wrong" was unnecessary to the admission did not go far enough.

The East Bentleigh meeting, with 43 members present, requested that former Moorabbin Rental Housing Co-operative members who wished to renew their 2004 leases should be able to do so without delay.

Board agreement with the request of the former MRHC members would remedy the concerns of these members and the Housing Registrar has directed SEHC to remedy these concerns but the Housing Registrar has also directed SEHC to satisfy the expectations of DHS.

It has been a difficult choice for the Board and not straight forward—because of the Housing Registrar's directive. Nonetheless, the board has agreed to renew the 2004 leases of seven former MRHC members who requested that their leases be renewed. Since the Housing Registrar's directive of 13 January 2011, the board has not chosen to frustrate the former MRHC members and delay the decision but to make a careful decision that would not adversely impact on the co-operative and all members. It is hoped that all members will appreciate that the board was between a rock and hard place.

In agreeing to review the 2004 lease as requested by members, the board has to satisfy DHS that this a reasonable course of action. If DHS is not satisfied that this is a reasonable course of action, then, not only has DHS been left dissatisfied—the Housing Registrar may conclude that SEHC has failed to satisfy DHS.

## THE LEASE SUB COMMITTEE

The Lease Sub Committee is a sub-committee of the Governance and Policy Committee of the board. To date the Lease Sub Committee has twelve members—four board directors and eight members nominated by three of the member meetings. It is a large committee but, nonetheless, workable if there is a common commitment. The first meeting of the

Lease Sub Committee was on 15 April 2011. The Lease Sub Committee will continue to meet until its work is completed and a report goes to a general meeting for a vote on a revised lease. There will be two further meetings of the Lease Sub Committee on the 6 and 13 May 2011. A Lease Comparisons document has been prepared for consideration by the Lease Sub Committee.

## HOUSING REGISTRAR DIRECTIVE

In a 13 January 2011 letter to SEHC, the Housing Registrar has directed that a revised lease agreement should be prepared that remedies the concerns of SEHC tenants that complained to the Registrar and also requires SEHC to meet the expecta-

tions of DHS in respect of being consistent across both the public and social housing sectors. The directive has been made using powers under s100 of the Housing Act 1983. SEHC is required to provide evidence that the instruction has been met

and that there has been proper consultation with tenants in finalizing a new lease. The challenge for the board, therefore, is to reconcile member "concerns" and DHS "expectations" and provide "evidence" of this to the Housing Registrar.

## ISSUE—"NON STANDARD" ITEMS

A **Hobson's choice** is a **free choice** in which only one option is offered—the choice is between taking the option or not; "take it or leave it".

SEHC policy has been it will not maintain and repair "non-standard" items. This policy has been included in the Member Manual and has, therefore, been endorsed by general meetings of members

The Residential Tenancies Act provides that all items in a property should be maintained and repaired when a tenant takes up tenancy. There is no such thing as a "non-standard"

item in the RTA.

If SEHC does not want to maintain and repair "non-standard" items it will either have to remove the "non-standard" items before a tenant moves in or make a special arrangement with the new tenant for the tenant to be responsible for their maintenance and repair.

SEHC is not responsible, however, for "non-standard" items installed

by a sitting tenant. It would become responsible if a new tenant moved in and there was no special arrangement regarding responsibility for maintenance and repair.

Member Manual policy on "non-standard" items will have to be revised to achieve consistency with the Residential Tenancies Act.

## A PROPOSAL IS NOT ACCEPTANCE

The board recognizes that the development and approval of a new lease by a general meeting of members is a beginning.

The board wishes to start again with a new and better lease.

The 2010 lease is a "dead duck" in the sense that the board regrets the lease was developed, the process it allowed to develop and implement the lease—and the conse-

quences.

While the 2010 lease is a political dead duck, it is a legal lease.

Members who have signed the 2010 lease have a legal right to remain on that lease and there will be no attempt to require members to switch to the new lease. SEHC cannot do this and it would be totally inappropriate.

The challenge, therefore,

is to develop a new lease that is superior to the 2004 and 2010 leases—and that members regard the new lease as superior. The board is confident that if members decide the new lease is superior, then, they will opt to transfer to the new lease. This depends on two critical elements:

The new lease is superior.

Switching to the new lease is voluntary.

## WHAT'S IN A PERIOD-OF A LEASE?

SEHC members have in the past been offered a five year minus one day lease. This was provided in the 2004 and 2010 leases. The former Moorabbin Rental Housing Co-operative Members were allowed to revert to periodic leases in 2009. Instead of renewing the leases in 2009, it was decided that it was preferable for all tenants to commence a five year lease minus one day in 2010. But, then, the 2010 lease prepared was a different lease from the 2004 lease! The OoH has suggested that a periodic lease provides the same security of tenure as a fixed term lease.

A periodic lease has no end date and the experience to date with community and public housing is that it has provided the same security of tenure as a fixed term lease. OoH tenants have periodic leases.

Common Equity Housing Ltd has 100 member co-operatives with 2000 properties and the members of the co-operatives are offered a choice between a fixed term and periodic leases—a majority chose periodic leases and a minority chose fixed term leases.

The potential difference between fixed term and periodic leases is the capacity of a landlord to give tenants on a

periodic lease 120 days to vacate without reason.

Community housing providers do not exercise this option and the OoH would oppose the exercise of this option. A fixed term lease does provide some protection, however, against government policy that could change and direct the OoH, for example, to apply stricter continuing eligibility criteria. The options are to offer:

1. A fixed term lease.
2. A periodic lease
3. A fixed term or periodic lease.

The experience to date, however, is that security of tenure is common to fixed term and periodic leases.

Civility means we should always treat each other with consideration and respect. The process of developing a new lease should be polite, calm and reasonable - even during heated debates

## WHAT SHOULD OR SHOULD NOT BE IN A LEASE?

The work of the Lease Sub Committee will be to decide to recommend to a general meeting what should be included in a new lease. Should the new lease include clauses on:

Information

Condition

Damage to Premises

Pets

Sub-Letting

Rent Review

Rent

Use of premises

Utility Charges

Garden Maintenance

Mechanical Repairs

Utility Charges

Alteration

Cleanliness of Premises

Indemnity

Liquid Fuel Heaters

Locks

Smoke Alarms

Variations

Waiver

Developing a new lease should not take too long as there is not much flexibility about what can be included in a lease. The Residential Tenancies Act governs the relationship between landlords and tenants and anything in a lease that goes against the RTA is void.

## GENERAL MEETING

**Dandenong Club, 1579 Heatherton Road (corner Stud Road)  
Dandenong 3175, 7 00 to 9 00 pm, 9 May 2011.**

**Melways reference 90 G3.**

## Consultation Meetings

The consultation process is an initiative of the board - decided at a meeting on 17 December 2011—before receiving and knowing about the Housing Registrar's 13 January 2011 directive.

Authorised by Shirley Faram, on behalf of the SEHC Board, 19 April 2011. SouthEast Housing Co-operative Ltd, PO Box 7141, Dandenong, 3175. 03 9706 8005. Fax 03 9706 8558. [www.sehc.org.au](http://www.sehc.org.au)

Further member and general meetings will be organized as necessary—subject to the 9 May 2011 general meeting. The Bentleigh East -based member meeting on 4 April 2011 has already endorsed quarterly meetings with bi-monthly meetings in the meantime which will be reviewed after six months. The next Bentleigh East-based meeting is on 30 May 2011. The Bayswater North meeting on 11 April 2011 endorsed two area meetings a year—as well as a general meeting and the AGM. An additional member meeting in Huntingdale was held 18 April 2011.

## PROGRESS OF THE LEASE CONSULTATION PROCESS

The consultation process to date has involved:

Four member meetings at Bayswater North, Bentleigh East, Frankston and Huntingdale.

A general meeting of members to be held on the 9 May 2011.

Publishing of two Housing Lease Futures newsletters.

Updating the SEHC web site on lease matters.

The formation of a Lease Sub Committee.

What the board would like is to have the new proposed lease prepared as quickly as possible consistent with sound decision-making. While it might not be

possible to have a lease by the general meeting on the 09 May 2011, the Lease Sub Committee will be able to present a report. The general meeting may also decide to set a deadline for the development of a new lease.

The board also recognizes, however, that the development of a new lease will depend on the availability and deliberations of the Lease Sub Committee which will set its own deadline subject to any directive of the general meeting on the 9 May 2011.

The Lease Sub Committee will also have to decide what resources it may require to complete its work. There is,

however, a limited range of options and choice in developing a new lease.

Nonetheless, there are real choices and decisions to be made about what to include in and exclude from a new lease. We know already that the new lease will exclude the dual occupancy clause and will have a different provision for the repair and maintenance of “non-standard” items.